

PLEASE POST  
March 2001

## **PECFA UPDATE #15**

***This update revisits some important changes that were part of the Budget Bill signed in October of 1999.***

*Changes to State Statute 101.143 regarding:*

<i>Bonding</i>	<i>Deductibles</i>
<i>Future PECFA Liability</i>	<i>Farm Tanks</i>
<i>Bidding</i>	<i>DNR Fees</i>
<i>Interest</i>	

*Other Reimbursement Issues Include:*

*Abandonment of Horizontal Piping*  
*Filing of Deed Notices*  
*Conditional Closures*

<p><b><i>Bonding</i></b></p>	<p><b><i>The legislature authorized the sale of 270 million dollars in revenue bonds to pay off the PECFA backlog of claims.</i></b></p> <p><i>Since March 2000, PECFA has paid 5800 claims totaling 310 million dollars.</i></p> <p><i>In addition, the PECFA Program was able to reduce the time that a claim is in line waiting to be audited from 14 months to 2 months.</i></p> <p><i>Currently a regular claim takes approximately 3 months from the time it is received in our office until a reimbursement is mailed.</i></p> <p><i>Priority claims take approximately 6 weeks.</i></p>
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<b>New Deductibles</b>	<p><b>For an occurrence where an acceptable remedial action plan is received by the Department of Commerce or DNR on or after 11/1/99.</b></p> <p><b>UST's</b> (except Schools, technical colleges, or home heating oil) \$2500 plus 5% of eligible costs. The \$7500 maximum was eliminated.</p> <p><b>AST's</b> (located at a terminal) \$15,000 plus 10% of eligible costs that exceed \$200,000.</p>
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<b>Future PECFA Liability</b>	<p>The PECFA Program, in an effort to determine its long term financial obligation, has designed and implemented a "Web Based Reporting System" to be used by lenders. This system will be used to report outstanding loan balances that will be submitted in future PECFA Claims.</p> <p>Two rounds of reporting have been conducted and we are now working on compiling reports from the effort. In the future, we will be seeking to add data from those RP's that are self financing their remediation.</p>
<b>Farm Tanks Get Priority Review</b>	<p><b>101.143 (4) (ei)</b> 2. The department shall review claims related to discharges from farm tanks described in subd.1. as soon as the claims are received. The department shall issue an award for an eligible discharge from a farm tank described in subd. 1 as soon as it completes the review of the claim.</p>
<b>Sites Over 60K are sent to Public Bid</b>	<p><b>101.143 (3) (cp) Bidding Process</b> 1. Except as provided in subds. 2. To 5. If the department of natural resources or if the site is covered under s. 101.144 (2) (b) the department of commerce estimates that the cost to complete a site investigation, remedial action plan and remedial action for an occurrence exceeds \$60,000, the department of commerce shall implement a competitive public bidding process to obtain information to assist in making a determination under par. (cs).</p> <p>If a 60K notification letter is not provided for the site by the RP, Commerce will submit the site to the bid process. If the less than 60K option is chosen by the responsible party, remember to submit a letter notifying the Department of Commerce, with a copy to the DNR if it is under DNR jurisdiction, of your intent to stay under \$60,000 <b>prior to the start of remedial activities</b>. At a minimum, the responsible party must be copied on the letter and we prefer that the letter be signed by the responsible party. If the notification letter is delayed and a site enters the public bid process, approval of the 60K option will be denied.</p> <p><b>It is expected that the site investigation report, for 60K option sites, will be incorporated with the closure report which will be submitted to the agency with jurisdiction. If you do submit a site investigation report, it will be put in the review line for the Site Review Section for review and preparation for public bidding.</b></p>
<b>DNR Fees</b>	<p>DNR fees incurred on or after 10/29/99 are not eligible for reimbursement. This includes DNR closure review fees, GIS recording fees (when implemented), and Voluntary Party Liability Exemption program fees.</p>

<p><b>Other Issues</b></p>	<p><b><i>The department has determined that the following costs are not eligible for PECFA reimbursement:</i></b></p> <p><i>The abandonment of horizontal piping. (Well abandonment is required in NR 140 only for vertical groundwater wells, not for piping serving to remediate soil above the groundwater.)</i></p> <p><i>The legal or recording costs of filing a deed notice/restriction or institutional control for a property.</i></p> <p><i>Remedial costs after conditional closure is offered.</i></p> <p><b><i>Once DNR or Commerce offers conditional closure, PECFA will not fund additional work at the site (except for proper closure of monitoring wells and other post closure costs). At the time conditional closure is provided, a final claim should be submitted for reimbursement. A copy of the conditional closure letter is to be included with the claim.</i></b></p>
<p><b>Notes From the Tech Site Review Staff</b></p>	<p><b><i>Please be sure to include your <u>Commerce Number</u> on all correspondence to the PECFA Program!</i></b></p> <p><b><i>PECFA site review staff and their assigned zip code areas are located on our web page.</i></b></p> <p><b><i>Remedial Action Plans (RAPs) will be required only on a site-specific basis and only when specifically requested by the agency with jurisdiction.</i></b></p> <p><b><i>For sites under DNR jurisdiction, that are expected to enter the public bid process, please send a copy of the site investigation report to both the DNR and Commerce.</i></b></p> <p><b><i>For sites going through the competitive bid process, the milestone for submitting the site investigation claim is met when the bids are evaluated, the winning bid is selected, and the remediation cap is set.</i></b></p>

## **Interest and Loan Fees**

***We are now starting to reach the point where we are routinely seeing loans created under the biennial budget language. The budget provided that for loans secured on or after November 1, 1999:***

### ***101.143(4)(c) Exclusions from eligible costs***

***8. Interest costs incurred by an applicant that exceed interest at the following rate.***

***a. If the applicant has gross revenues of not more than \$25,000,000 in the most recent tax year before the applicant submits a claim, 1% under the prime rate.***

***d. If the applicant has gross revenues of more than \$25,000,000 in the most recent tax year before the applicant submits a claim, 4%.***

***Where a loan was secured on or after 11/1/99, documentation of gross revenues must be submitted as part of any reimbursement claim that includes interest costs. In the absence of the necessary documentation, the department will reimburse interest at the lower rate of 4%.***

***Only interest calculated at the eligible rates should be submitted for reimbursement.***

***Loan origination fees are 2% of the loan amount.***

***Annual loan renewal fees are 1% of the outstanding unreimbursed amount.***

***We have previously distributed loan scenarios to help the public understand the department's position on interest reimbursement. We are again providing that document for your review.***

***For more information on PECFA, please visit our Web Page at:***

***<http://www.commerce.state.wi.us/ER/ER-PECFA-Home.html>***

Interest Cost Reimbursement  
July 2000

**This article appeared in the PMAW Newsletter in July of 2000. Hopefully, the following will answer many of your interest rate questions:**

### **Loan Scenario 1**

Loan is secured prior to November 1, 1999, by a loan agreement dated prior to November 1, 1999. The amount of the loan includes principal and interest (with interest costs being paid out of the committed principal amount). The loan is written at prime plus 1%. Interest on this loan is reimbursable by PECFA at prime plus 1% until the loan amount committed is reached. At the point in time when the original commitment is reached, an additional commitment would most likely be executed to create a higher loan amount. **If the new "loan" is dated on or after November 1, 1999, all interest costs from the date of signature forward would be reimbursable at only the prime minus 1% or 4% level regardless of whether the interest is on new remediation costs or simply interest costs still accruing from the original loan dollars.**

### **Loan Scenario 2**

Loan is secured prior to November 1, 1999 and written for a principal amount plus interest. Loan is written at prime plus 1%.

Interest on this loan is reimbursable by PECFA at prime plus 1%. **Interest can continue to be accrued on the loan after the principal commitment is reached and be reimbursed at prime plus 1%.**

**If a decision is made to "pay" the accrued interest out of the proceeds of another loan, the rate on the other loan at which interest is reimbursable by PECFA will depend on the date the other loan originated. If the other loan originated on or after November 1, 1999, the interest would be reimbursable either at the prime minus 1% or 4% level. Any interest costs/charges included in a loan, which originated on or after November 1, 1999, can only be reimbursed at prime minus 1% or 4%.**

### **Loan Scenario 3**

Two loans are secured prior to November 1, 1999. One loan is written to cover remediation costs and the second is written to provide for the accrual/accumulation of interest. The first loan has a stated dollar amount (for remediation costs) and the second loan is for the current year with a specific termination date. However, the second loan does not have a specific dollar amount provided in the loan agreement. The loan is written at prime plus 1%. These loans are treated the same as the loan in Loan Scenario 2. **Interest is reimbursable by PECFA at prime plus 1%.**

If the interest on the second loan agreement is paid out of the proceeds of a third loan, the rate on the third loan at which interest will be reimbursable by PECFA will depend on the date of the third loan. **If the third loan originated on or after November 1, 1999, the rate will be reimbursable at the prime minus 1% or 4% level. Again, all interest costs/charges included in a loan, which originated on or after November 1, 1999, can only be reimbursed at prime minus 1% or 4%.**

### **Loan Scenario 4**

A true revolving line of credit, evidenced by a revolving line of credit agreement with appropriate terms, secured prior to November 1, 1999, will be reimbursable by PECFA at prime plus 1%. A revolving line of credit agreement secured on or after November 1, 1999 will be reimbursable at either the prime minus 1% or 4% level.

PECFA may need to review the loan documents to determine, on a case-by-case basis, whether the documents constitute a true revolving line of credit secured prior to November 1, 1999. As a general guide, however, the fact that a lender does not charge a 2% origination fee on a new advance would be indicative as would be the use of the Wisconsin Bankers Association form for a "Business Credit Agreement" that is written to allow the customer to "borrow, repay and re-borrow" under the agreement. **The receipt of a reimbursement from PECFA would restore room under the original commitment amount if the loan documents constitute a true revolving line of credit and all provisions of the agreement are adhered to.**

### **Loan Scenario 5**

If a loan commitment was completed before November 1, 1999, but all papers were not signed until after November 1, 1999, does the reimbursement of interest fall under the old or new rates? For a commitment letter to establish an obligation on the part of the claimant, the letter would have to:

- Be site specific
- Have been signed by the claimant prior to November 1, 1999
- Have been done at the request of the claimant
- Include information on interest rates and collateral
- Have an expiration date to the offer

Commitment letters that meet the tests outlined, and other applicable provisions of the PECFA statute, can be converted to a note and be reimbursable at the prime plus 1% rate.

### **Loan Scenario 6**

A loan has reached its commitment amount of \$150,000. It is now up for renewal and new money is being extended pay for the next year's interest (e.g., \$12,000 additional commitment is made). **The new loan for \$162,000 would be reimbursable at either**

**the prime minus 1% or 4% level if the new commitment/note is originated on or after November 1, 1999.**

#### **Loan Scenario 7**

A loan has not reached its commitment level but it has reached the date of its annual review. No new money is being extended. An annual review fee can be charged and the original note can continue to accrue interest reimbursable by PECFA at prime plus 1% provided the original note was executed prior to November 1, 1999. **A simple review executed on or after November 1, 1999, of an original note secured before November 1, 1999, remains a loan secured prior to November 1, 1999, for purposes of interest reimbursement by PECFA.**

We hope that the information provided illustrates our understanding of the reimbursement provisions. If you have questions on the examples, please contact the PECFA program.